

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES, *et al.*,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

No: 1:23-cv-00108-LMB-JFA

**JOINT MOTION TO MODIFY THE ORDER REGARDING PRE-
TRIAL SCHEDULE AND PROCEDURES**

PURSUANT TO Rule 16(b)(4) of the Federal Rules of Civil Procedure and Local Civil Rule 16(B), Plaintiffs and Defendant jointly move to modify the order regarding pre-trial scheduling and procedures (ECF No. 1560, the “Order”) regarding the designation of deposition testimony by one party for witnesses whom the other party has listed as providing live testimony. The grounds for granting this relief are as follows:

1. The court rules provide that a scheduling order “may be modified only for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4); *accord* E.D. Va. Civ. R. 16(B) (“good cause” required to modify schedule). Generally, a showing of “good cause” to modify the scheduling order requires showing “that the deadlines cannot reasonably be met despite the party’s diligence.” *Cook v. Howard*, 484 F. App’x 805, 815 (4th Cir. 2012) (unpublished *per curiam*) (citations omitted); *accord* Fed. R. Civ. P. 16, 1983 Adv. Comm. Notes (the movant must show that the current deadlines “cannot reasonably be met despite the diligence of the party seeking” the modification). Moreover, the Court must consider, *inter alia*, “the length of delay and its potential impact on judicial proceedings.” *Roe v. Howard*, 2017 WL 3709088, at *1 (E.D. Va. June 30,

2017). The parties submit that good cause exists to modify the Order to correct for an inconsistency within the Order regarding the designation of deposition testimony.

2. Paragraph 1 of the Order requires each party to file a witness list and state whether they intend to call a witness live or by deposition designation. (ECF No. 1560 at 1.) It prohibits a party from “submitt[ing] deposition designations for that witness at trial” if the other party lists the same witness as coming live. (*Id.* at 1–2.) Paragraph 3 requires that initial deposition designations be disclosed by August 22, with subsequent deadlines for counter and reply designations, and any testimony not designated may not later be designated. (*Id.* at 2.)

3. To the extent these provisions prohibit a party from submitting deposition designations on August 22 for a witness identified by the other party as being called for live testimony, a situation could arise where a party determines during trial not to call a specific witness live with the other party having no opportunity to submit depositions designations. To address this potential situation, the parties propose to amend the Order to allow a party who listed a witness by designation, but was precluded from submitting designations because the other side identified the same witness as coming live, to disclose designations should the other side choose to not call that witness live at trial.

WHEREFORE, the parties respectfully request that the Court grant this relief. A proposed order is submitted herewith.

WAIVER OF ORAL ARGUMENT:

The parties waive oral argument on this procedural motion.

JOINTLY SUBMITTED this 18th day of August 2025:

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